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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,552	11/25/2003	Jean-Louis Gueret	NONY 3.0-015	5845
530	7590	06/09/2006	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			MANAHAN, TODD E	
			ART UNIT	PAPER NUMBER
			3732	

DATE MAILED: 06/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

88

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/721,552		GUERET, JEAN-LOUIS	
	<b>Examiner</b>		<b>Art Unit</b>	
	Todd E. Manahan		3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11/29/03, 0329/04</u> .   | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, lines 2 and 3, it is unclear what is meant by the portion including “a middle at a distal end extending from said middle”.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5-11, 19, 22, 24, 26, 29, and 31-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson (United States Patent No. 3,343,551).

Anderson discloses an applicator for mascara comprising a rod 20 having a longitudinal axis and a brush fixed to an end of the rod. The brush includes a core having a bristle carrying portion 10 and bristles extending from the bristle carrying portion. The bristle carrying portion makes an angle relative to the longitudinal axis of 0-60 degrees (see col. 4, lines 1 and 2 and figure 2). The free ends of the bristles define a non-circular envelope surface of constant cross section. The core is off center of the brush. The bristles are made of resilient material.

Claims 1, 5-11, 29-33 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Cassai (United States Patent No. 4,165,755).

It is noted that in going from the position shown in figure 1 to that shown in figure 4, the bristle carrying portion would extend through angles of 0.2 to 20 degrees.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5-11, 16-18, 29-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ennio (French Patent No. 2,798,267).

Ennio discloses the claimed invention except for the specific angle the bristle carrying portion makes relative to the longitudinal axis of the rod (see figure 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the bristle carrying portion make an angle of between 0.2 and 20 degrees relative to the longitudinal axis of the rod, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Claims 1, 5-11, 16-18, 29-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anakama (Japanese Patent Application No. 54-37173).

Anakama discloses the claimed invention except for the specific angle the bristle carrying portion makes relative to the longitudinal axis of the rod. It would have been obvious to one

Art Unit: 3732

having ordinary skill in the art at the time the invention was made to have the bristle carrying portion make an angle of between 0.2 and 20 degrees relative to the longitudinal axis of the rod, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. Regarding claims 16-18, it would have been obvious to one of ordinary skill to make the core of twisted wire having either a right or left hand pitch, as it is old and well known in the art to make mascara brushes with a twisted wire core having either a right or left hand pitch.

Claims 2-4, 12-15, 19-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anakama as applied to claim 1 above, and further in view of Gueret (United States Patent No. 5,918,994).

Gueret discloses various mascara brushes having non-circular cross sections; longitudinal ribs; plane surfaces; concave surfaces; constant cross sections; varying cross sections; and cross sections that vary in size, but not shape. It would have been obvious to one skilled in the art to form the brush of Anakama with the bristles forming an envelope having non-circular cross sections; longitudinal ribs; plane surfaces; concave surfaces; constant cross sections; varying cross sections; and cross sections that vary in size, but not shape in view of Gueret in order to obtain a make-up which is full-bodied, regular, elongated and curls.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

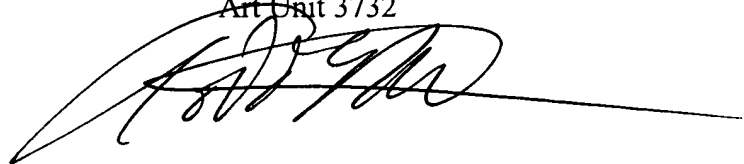
Art Unit: 3732

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd E. Manahan whose telephone number is 571 272- 4713. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Todd E. Manahan  
Primary Examiner  
Art Unit 3732

A handwritten signature in black ink, appearing to read 'T.E. Manahan', with a long horizontal line extending to the right.

T.E. Manahan  
1 June 2006